

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 842
Case No. 96-5
(Text Amendments - Solid Waste Handling Facilities)
March 9, 1998

The Zoning Commission for the District of Columbia initiated this case in response to a petition from the Office of Planning to amend the text of the District of Columbia Zoning Regulations, Title 11, District of Columbia Municipal Regulations (DCMR). The purpose of the amendments is to provide regulations that govern the location of solid waste handling facilities. The amendments allow location of these facilities in the C-M and M zone districts with Board of Zoning Adjustment approval through the special exception process. Amendments to the Zoning Regulations are authorized pursuant to the Zoning Act {Act of June 20, 1938, 52 Stat. 797, as amended, D.C. Code Ann. Section 5-413 (1981)}.

The petition, filed on May 3, 1996, presented background information about the proposal, and presented the proposed text with comments indicating the intent and justification for the proposal. At its public meeting on May 23, 1996, the Zoning Commission determined that the proposed text amendments presented a sound basis for consideration and authorized a public hearing.

Pursuant to proper notice, the Zoning Commission held a public hearing on the proposed amendments on October 3, 7 and 17, 1996. The public hearing was conducted in accordance with the provisions of 11 DCMR 3021. At the close of the public hearing, the Commission left the record of the case open until November 29, 1996 to receive additional public comments.

During the three hearing sessions on this case, the Commission heard testimony from Councilmember Harry L. Thomas, Sr. of Ward 5, Rob Robinson on behalf of Councilmember Harold Brazil of Ward 6, the presentation of the Office of Planning (OP), testimony from the Department of Consumer and Regulatory Affairs (DCRA), the Department of Public Works (DPW), the Commission on Public Health, Advisory Neighborhood Commissions 5A and 6A, Browning-Ferris Industries, L.G. Industries, League of 8000, Dupont Circle Citizens Association, Waste Distribution Industries, Eastern Trans Waste, Rodgers Brothers, Innovative Recycling, the Near Northeast Neighborhood Task Force, Georgetown University Law Center Institute for Public Representation representing the Near Northeast Neighborhood Task Force, Waste Management of Greater Washington, the Upper Northeast Community Coalition, Residents of Thirteenth Street, N.E., and five individuals. Additionally, the record of this case contains more than 150 exhibits made up of letters, reports, articles, photographs and videos related to solid

waste facilities and indicating support, support with modifications or opposition to the proposed amendments.

TESTIMONY AND SUBMISSIONS OF COUNCILMEMBERS

Councilmember Harry L. Thomas, Sr. and Rob Robinson representing Councilmember Harold Brazil presented testimony to the Commission during its hearing sessions on this case and submitted correspondence to the record of the case. In addition, the Commission received correspondence from the late Council Chairman David Clarke, Councilmembers John Ray, Jack Evans, Kathleen Patterson, Frank Smith, William Lightfoot and Charlene D. Jarvis. Their comments are summarized as follows:

1. The Commission should refrain from enacting regulations that would allow recycling and transfer facilities to line New York Avenue. Regulations should be supportive of the New York Avenue Development Corporation Bill.
2. The Commission should expeditiously adopt regulations to appropriately locate solid waste facilities. The absence of regulations has created a void which has resulted in lawsuits against the District by existing facilities and new companies that have been unable to get building permits from DCRA.
3. Any regulations enacted by the Commission must ensure that the facilities are well managed, maintained and will result in minimal negative impacts on residents and the environment. The regulations must additionally ensure that facilities will be properly buffered from residents and that they will operate under appropriate standards.
4. The proposed regulations will not properly address existing facilities and therefore, the Commission should consider a map amendment instead of a text amendment. Solid waste facilities should be sited at railheads or have direct access to major arterials. Trucks should not be allowed to travel through residential neighborhoods.

By Resolutions 12-280 and 12-281, Sense of the Council on Regulations of Solid Waste Transfer Facilities Emergency Resolution of 1997, dated October 7, 1997, the Council of the District of Columbia declared, on an emergency basis, the sense of the Council that the Zoning Commission should promulgate regulations governing the operation of solid waste facilities within the District of Columbia that fully protect the health, safety, and welfare of the residents who live near solid waste transfer facilities.

In response to the comments of members of the Council, the Commission notes that it is aware of its responsibility to enact regulations that provide for the appropriate location of solid waste facilities in the District of Columbia, and in so doing, the Commission recognizes the difficult task of balancing the competing interests in this case. The Commission has heard testimony and received many items of correspondence from citizens who are impacted by existing facilities, from

companies that operate solid waste facilities and from government agencies involved in reviewing and issuing permits for operation of solid waste facilities and organizations that advocate for their communities. The Commission believes that it has considered all of the information provided in this case in deciding the text of the regulations that will govern the location of solid waste handling facilities in the District of Columbia.

The Commission agrees that its regulations should provide for adequate buffering of solid waste facilities from residential communities; where possible, should provide for location of solid waste facilities by railheads or major arterials; and should provide for minimal negative impacts on the surrounding neighborhood. Additionally, the Commission notes that its regulations, as proposed, will provide for minimum distances from residential properties and adjacent properties that will preclude the possibility of solid waste facilities lining New York Avenue.

THE REPORT AND TESTIMONY OF THE OFFICE OF PLANNING

By testimony presented during the public hearing sessions and reports/memoranda dated September 23, 1996, October 3, 1996, October 17, 1996, December 5, 1996, November 29, 1996, February 7, 1997 and October 3, 1997, the Office of Planning (OP) provided the Commission with background information, analyses, explanations, examples, comments and recommendations related to solid waste facilities and the proposed amendments. The Office of Planning initially recommended adoption of the proposed regulations as advertised. As the Commission moved through the process of taking proposed action and revised proposed action the OP played an important role in helping the Commission refine the proposed regulations.

In its report dated September 23, 1996, the OP gave background information about the need for regulation of solid waste facilities. OP noted that in 1992, the Zoning Commission adopted regulations governing intermediate materials recycling facilities to encourage the development of a recycling industry in the private sector, while regulating the land use to ensure a reasonable compatibility between the facilities and adjacent and nearby communities. The recycling regulations specifically excluded the storage or processing of biodegradable (solid waste) materials.

OP further indicated the differences between solid waste handling and solid waste disposal. Solid waste handling (trash transfer) involves the aggregation of individual trash loads, collected by trash trucks which pick up trash from neighborhoods and commercial or industrial facilities, into larger loads to be hauled to a final disposal site. Solid waste disposal involves the final disposal of solid waste in a landfill or incinerator facility.

Until 1993, the District government provided solid waste transfer (handling) and disposal services for all waste generated in the District of Columbia. District government and private haulers either disposed of their solid waste at the Benning Road Solid Waste Reduction Center #1 (incinerator) or at the Fort Totten Transfer Station for "repackaging" in larger trucks and ultimate hauling to the Lorton landfill. OP noted that beginning in the 1980s, capacity decreased at both the Benning

Road and the Fort Totten facilities. Private haulers, who collect 70 percent of solid waste generated in the District, were forced to make the 70-mile round trip to the Lorton facility. This created a serious financial problem for the private haulers and created a demand for private solid waste handling facilities in the District. In 1992, private solid waste handling facilities began to locate in abandoned warehouses and on vacant lots in the District of Columbia. These facilities provided a needed service for private haulers, but presented potential environmental problems that could affect adjacent and nearby communities.

The District first began to explore a process for regulating the private facilities. By February 27, 1996, the Council had adopted the D.C. Solid Waste Facility Permit Act of 1995, which prohibited open solid waste facilities, required permits prior to operation, established permit fees and required existing facilities to cease operation unless they received an operating permit. Regulations to implement the law were published on April 26, 1996. The regulations governing solid waste facility licensing and operations provide a context for zoning. Both licensing and zoning play a distinct yet supportive role in ensuring that solid waste handling and disposal operations do not pose a threat to human health, the public welfare of the environment and are reasonably compatible with adjacent and nearby land uses.

The OP stated that new zoning regulations are needed to address the land use issues raised by the location of solid waste facilities and to support the permitting regulations. The proposed regulations for solid waste facilities were patterned after the recycling regulations, but because of the potential for greater adverse impacts, they are more restrictive. They provide for location of the facilities in C-M and M zone districts only by special exception proceedings. The proposed regulations address the following issues: minimum distance from residential property; potential adverse impacts; access to and from the facilities; external effects; site enclosure by wall or fence; parking and queuing on-site; and building enclosure for all activities.

In subsequent reports and submissions the Office of Planning has aided the Commission in refining its proposed rules by providing additional information and revised text. After reviewing the OP's analysis of what sites would be available at various distances from residential uses (1000 feet, 500 feet, and 300 feet) and its analysis of recommendations made during the hearing sessions, the Commission refined its proposed rules.

After publication of its Notice of Revised Proposed Rulemaking, the Commission received a number of comments including, the report of the National Capital Planning Commission and comments from the Department of Public Works. Additionally, the Council of the District of Columbia has enacted emergency legislation to amend the District of Columbia Solid Waste Facility Permit Act of 1995. The OP provided the Commission with responses to its revised proposed rulemaking which are discussed later in this order.

THE REPORTS AND SUBMISSIONS OF OTHER GOVERNMENT AGENCIES

The Department of Consumer and Regulatory Affairs and the Department of Public Works testified briefly during the public hearing on this case and responded to questions raised by the Commission. The departments made the following points in their testimony and in response to the Commission's questions:

1. Zoning is a key element in the regulation of solid waste facilities, along with traffic, health and safety laws, the Building Code, the Fire Code, and licensing regulations promulgated under the Solid Waste Facility Permit Act.
2. Interim permits were issued to three of four facilities that applied for them, and operators must comply with all operating regulations as to smell, queuing, etc. All must apply to the Board of Zoning Adjustment (BZA) for special exception approval once the Zoning Commission enacts regulations.
3. The Court struck down the portion of the regulations requiring a 4 dollar per ton of trash originating outside of the District. The remainder of the regulations are in place.
4. It is estimated that there will be a need for six private facilities, possibly fewer. This figure is based on the fact that about 800, 000 tons of trash are collected in the District each year, of which 200, 000 tons are picked up from residences by D.C. haulers and handled by D.C. facilities. The remaining 600, 000 tons can be processed by six, or fewer, private facilities.
5. The District's two current facilities both need substantial capital investment. With no capital funds available, the District plans to have them retrofitted and operated by private contractors and continue to handle residential trash.

The Commission on Public Health submitted information to the record of this case and provided testimony at the public hearing stressing its support of strong zoning regulations and recommended modifications to the proposed regulations as follows:

1. Without accompanying regulations in place, all references to solid waste disposal should be eliminated.
2. The minimum distance should be 300 feet and should be measured from the lot line of any adjacent use.
3. The reference to a landscaping requirement should be generalized, making no reference to the side of the facility facing either a public street or a residential zone district.
4. Site access and egress should be a minimum of 50 feet from any property line.

5. A fully enclosed building should be clearly defined to ensure the presence of vestibules and automatic doors which open only for truck access and egress.
6. State-of-the-art design features and information submissions should be required including, siting studies regarding local dispersal patterns of odors, two-level floor design, forced ventilation system and air scrubbers for odor control, specialized control of airborne dust and soot from diesel engines, a design to prevent the leaking of effluent into ground water, a rodent-proof structure, impermeable floors and concrete and masonry materials rather than metal for noise control.

The Zoning Commission agrees with many of the recommended modifications proposed by the Commission on Public Health and have incorporated many of them in the revised rules, and notes that the revised rules only address solid waste handling facilities. It is the Commission's intent to consider a regulatory scheme for solid waste disposal facilities at a later time.

THE REPORTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

Testimony was presented from Advisory Neighborhood Commissions (ANC) 5A and 5B, as well as from single member district members of ANCs 5A, 5B, 6A and 6B. The salient issues and concerns of the ANCs and the Commission's disposition of them are summarized below.

ANC 5A opposed the location of an existing facility at 2160 Queens Chapel Road, NE. The Commission thanks the ANC for its testimony in this case and notes that this case is a text case to promulgate regulations that will address the location and siting of solid waste facilities in the District. Therefore, the Commission will not review the operations of specific facilities. Once regulations are enacted, the review of specific facilities will be that of the BZA.

ANC 5B stated that it support the proposed regulations with a modification that would set the minimum distance from a residential lot line at 1000 feet. The Commission recognizes the burden and adverse impacts on residential properties adjacent to solid waste facilities that are improperly operated. However, the Commission is concerned that a minimum distance that is too large will effectively prohibit solid waste facilities from locating in the District of Columbia, which has a need for handling approximately 800, 000 tons of solid waste per year.

Commissioners from ANCs 5A, 5B, 6A and 6B made the following points:

1. Solid waste facilities should be located a minimum distance of 1000 feet from any community use. Solid waste facilities should be located a minimum distance of 500 feet from any community use. There should be a minimum distance requirement from all residences regardless of zoning. The Commission addressed the 1000-foot minimum distance recommendation above and believes the same analysis applies to a 500-foot minimum distance, with the likelihood of only a couple of sites being available in the

District. The Commission agrees that there should be a minimum distance requirement from all residences regardless of zoning and has such language in the proposed regulations.

2. There should be a limit of one or two facilities in the District. There should be no clustering of facilities in one area, if the adverse impacts cannot be controlled, the use should be prohibited. Each application should have detailed information. There should be a two-year renewal requirement for facilities, following a one-year trial period. The Commission's ultimate determination is not how many facilities can locate in the District of Columbia, rather how and where facilities can locate without substantial adverse impact on the surrounding area. The Commission believes that the standards required for special exception approval will eliminate clustering and provide for denial of applications by owners and operators who cannot meet the standards. The information addressing the standards will require detailed information from applicants before the BZA. Additionally, the BZA has authority to place conditions on special exception approvals, which can include a time limit for operating.
3. The Commission should provide a better definition of "residential street." The Commission notes that it has described the type of "street" within the text of the provisions where street-type is a consideration.
4. The citizens of the District of Columbia would pay more for trash pick-up to keep solid waste facilities out of the District. The Commission notes that this comment does not address the proposed regulations, and that setting fees for trash pick-up is not within the authority of the Commission. The Commission again notes that its responsibility in this case is to enact regulations that provide for the appropriate location of solid waste handling facilities within the District of Columbia.

TESTIMONY AND SUBMISSIONS OF OTHER ORGANIZATIONS AND INDIVIDUALS

Waste industry representatives and their experts and attorneys provided testimony about operations at solid waste facilities, the District's need for such facilities, and the effect of the proposed regulations on the waste industry in the District. Additionally, they provided suggestions and recommendations for modifications to the proposal. Their testimony and submissions are summarized below followed by the Commission's responses:

1. Buffers are not a panacea, other measures can mitigate possible adverse impacts of solid waste handling facilities. Landscaping and screening can help with aesthetics, odors can be 100 percent controlled within buildings with purification equipment, street sweepers can be used to keep streets clean, vehicles can be deodorized and underground tanks can prevent liquids from flowing into sewer systems. The industry is ready to construct a state-of-the-art facility in the District as soon as zoning regulations are adopted. The Commission agrees that buffers are not a panacea and believes that state-of-the-art equipment and methods, landscaping, screening, street sweepers, underground tanks, purification

equipment and deodorized trucks are all mitigation measures that can be considered during BZA review.

2. Solid waste handling facilities are not desirable but are necessary. They are essential to the vitality and viability of an urban environment. The Commission agrees that solid waste facilities are not desirable but believes that the District must take responsibility for handling its waste.
3. A 500-foot minimum distance from residential would require a 25-acre site for a solid waste handling facility, which is not feasible for the District. A 300-foot distance from residential would allow for a few sites, however, a 200-foot minimum distance from residential would allow for more sites and expansion of existing sites. A 300-foot buffer from any use would preclude solid waste handling facilities from operating in the District. The Commission's intent is not to preclude solid waste handling facilities from lawfully operating in the District. The Commission has taken testimony and been provided an analysis of the impact of certain minimum distances and has considered the information provided. The Commission believes that a 300-foot minimum distance from a residential property with a residential use and a 50-foot minimum distance from other adjacent properties are appropriate.
4. Zoning should not do licensing. A zoning ordinance cannot cover all issues surrounding solid waste facilities. Regulation of the operations of these facilities is best left to health and safety agencies. The Commission agrees that zoning cannot do licensing and notes that its regulations address the land use issues of solid waste handling facilities. The Commission acknowledges that its proposed rules may overlap with other regulations, but feels the overlap is minor and improves the proposed regulations.
5. Utilization of rail is important and should be encouraged. The Commission agrees and has included the preference in its revised rules.
6. A grandfathering clause is urged for those facilities with interim permits, to provide them the opportunity to meet the requirements of the amendments. The Commission is of the opinion that to convert interim permits to final permits for existing facilities would be contrary to the purpose for establishing applicable criteria which did not exist at the time the interim permits were issued. The Commission notes that if a facility with a valid interim permit is granted a special exception under the proposed regulations, the Board may also provide for a reasonable time to construct the facility as approved by the Board.
7. Eliminate BZA review which could result in additional restrictions. Establish specific measurable standards regarding noise, dust and odor. The Commission believes that the BZA special exception process is appropriate for the review of applications to locate solid waste facilities. The proposed rules provide guidelines for the BZA in reviewing applications for solid waste handling facilities, which include guidelines related to noise, dust and odor. The Commission notes that the BZA has experience in the area of special

exceptions and that some sites may need additional restrictions. Such a case-by-case review will provide the BZA the opportunity to review the unique circumstances and characteristics of each site.

A number of citizens' groups and affected residents provided correspondence for the record of the case and testified during the public hearing sessions. The citizens' groups included the Near Northeast Neighborhood Task Force (represented by citizens and the Georgetown University Law Center, Institute for Public Representation), the Dupont Circle Citizens Association, the "Residents of 13th Street" and the Upper Northeast Community Coalition. Most of the correspondence and testimony from these groups and residents pertained to the adverse community impacts generated by the privately owned solid waste handling facilities currently operating in the District. The testimony generally reflected anger and frustration with the operators of the facilities and the apparent lack of regulations to address the issues of waste-related activities. The salient issues raised in testimony by these groups and residents are summarized below followed by the Commission's responses:

1. The Zoning Commission should adopt the strongest regulations possible because DCRA's are temporary and there is no guarantee that they will be readopted. An Environmental Impact Statement should be required and a definition of "solid waste" should be included in the regulations. The Commission believes that its regulations may in some cases overlap DCRA's, but the Commission's regulations address land use issues not licensing. The Commission believes that the requirement for provision an EIS is not within its purview and notes that the District does have an Environmental Regulations Division within DCRA to address such issues. Finally, the Commission believes that its regulations address the definition of "solid waste."
2. The neighborhoods have experienced an explosion of rats and odors, and trucks noisily drop their trash receptacles beginning around 4:00 a.m. The odors are sickening, forcing residents to stay indoors with their windows closed. The Commission notes that the regulations include criteria that address the issues of rodents, odors and noise.
3. The trucks carrying solid waste are huge and heavy. They have caused damage to the District's infrastructure and have caused cracks in walls of houses on streets where they travel. A traffic plan is needed for heavy truck traffic. The Commission is aware of the potential damage such heavy trucks can cause and has included a requirement for a traffic study in its regulations.
4. There should be no exemption from the minimum distance requirement for residences in industrial zones. The use should not be allowed in C-M zone districts because it is incompatible with normal activities in such zones, including retail sales and food production businesses. Existing facilities should not be exempted from the new zoning regulations. The Commission believes that the use of property should be considered and not only the zone district and has included such language in the regulations. The Commission believes that with BZA review on a case-by-case basis, a solid waste handling facility that meets the

standards can properly locate in a C-M District. It is not the Commission's intent to exempt existing facilities.

Having discussed, considered and resolved the issues and concerns of the ANCs, the Commission determined that it has accorded the ANCs the "great weight" to which they are entitled.

The Commission took initial proposed action to adopt rules on February 10, 1997. Based on comments from the Office of Zoning, the Office of Planning, the Department of Public Works, the Department of Consumer and Regulatory Affairs and the Office of Corporation Counsel, the Commission took an additional proposed action on July 14, 1997. A notice of proposed rulemaking was published in the D.C. Register on August 15, 1997 for a 30-day public comment period. As a result of the publication of the proposed rules, the Commission received 13 responses, including comments from the National Capital Planning Commission, the Office of Planning, the Department of Public Works, the Department of Consumer and Regulatory Affairs, Councilmember Harry L. Thomas, Sr., and other organizations and individuals.

At its public meeting on October 23, 1997, the Commission took revised proposed action based on the comments it received from the public, the National Capital Planning Commission, the Office of Planning and others. The Commission published a Notice of Revised Proposed Rulemaking in the D.C. Register on December 19, 1997 for a 30-day comment period. As a result of the publication of the revised proposed rules, the Commission received 14 responses, including comments from the Office of Planning, the National Capital Planning Commission, other government agencies and other organizations and individuals.

The proposed decision to approve the text amendments was referred to the National Capital Planning Commission (NCPC) on July 15, 1997 and December 5, 1997 under the terms of the District of Columbia Home Rule Act of 1973, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Code Subsection 1-201 et seq. The Zoning Commission considered the initial comments of NCPC along with the comments of others and revised its proposed rulemaking. By report dated February 5, 1998 and transmitted to the Zoning Commission on February 6, 1998, the NCPC found that the revised proposed text amendments would adversely affect the federal establishment or other federal interests in the National Capital and would be inconsistent with the Comprehensive Plan for the National Capital. NCPC stated that it believes that the Zoning Commission should develop more stringent requirements relating to solid waste facilities in order to provide immediate protection to homeowners and businesses now impacted by solid waste handling facilities. NCPC recommended that the Zoning Commission as an interim step, revise the proposed zoning amendments to:

1. Establish a minimum 500-foot buffer between any establishment proposed to be used as a solid waste handling facility and an adjacent non-industrial use; and
2. Define "residential street", "air-locked building", and "non-industrial use" in the Zoning Regulations.

For the long term, the NCPC recommends that the Zoning Commission request the Department of Public Works to expeditiously prepare a comprehensive, long-range solid waste management plan that identifies the District's projected solid waste requirements and suitable sites for future solid waste handling facilities in the city and use the plan as a guide in further amending the Zoning Regulations.

At its special public meeting on February 26, 1998, the Commission reviewed and discussed the 14 responses it received, including the comments from the Office of Planning and the report of the National Capital Planning Commission. Based on the responses it received, the Commission made a number of changes to the text amendments as part of its final action on this case.

In response to the comments of the NCPC, the OP and others, the Zoning Commission notes that during its deliberations, it considered buffer areas of 200 feet, 300 feet, 500 feet and 1000 feet and determined that 200 feet was not large enough and that 500 feet and above would effectively prohibit solid waste handling facilities in the District of Columbia, whereas, the Commission's task in this case is to provide for the appropriate location of such facilities within the District of Columbia.

The Commission further notes that it has been suggested that the Commission define certain terms in the text amendments. The Commission notes that in revising the text of the amendments, it has defined "residential street" within the language of the appropriate provision; has deleted the term "air-locked" and therefore does not need to define it; and has chosen to specify uses within the specific provisions of the amendments and therefore does not need to define "non-industrial use" as part of the amendments.

The National Capital Planning Commission has recommended that the Commission request the Department of Public Works to prepare a comprehensive, long-range solid waste management plan. The Zoning Commission has been made aware that DPW intends to develop a comprehensive, long-range solid waste management plan that identifies, among other things, the District's requirements and suitable sites for future solid waste handling facilities. The Commission agrees with the NCPC that such a study will be helpful to the Commission in making further amendments to the Zoning Regulations.

The Zoning Commission believes that its decision to approve the text amendments set forth in this order is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the following amendments to the Zoning Regulations:

- 1. In Section 802 (Uses Subject to BZA Approval (C-M)), add new Subsections 802.4 through 802.9, as follows:**

802.4 Any establishment to be used as a solid waste handling facility shall be permitted only if the following requirements shall be met:

- (a) No portion of the facility, including any structure, loading dock, truck bay, storage container, transfer equipment, or any other processing equipment or operation, shall be located within three hundred feet (300 ft.) of a property in a residential district used for residential purposes, or shall be located within fifty feet (50 ft.) of any adjacent property used as a public park, or used for retail, office or institutional purposes.
- (b) No truck access to or egress from the site shall be located within fifty feet (50 ft.) of any adjacent property used as a public park, or used for residential, retail, office or institutional purposes.
- (c) The facility shall be designed to have access to a railway siding or spur to enable the transportation by rail of solid waste out of the District of Columbia. Solid waste shall be shipped from a facility by rail, except that shipping of solid waste by truck may be permitted by the Board, if the Board finds that the applicant has demonstrated by substantial evidence that the use of rail is not practically, economically or physically feasible.
- (d) The site shall be of sufficient size so as to permit the avoidance or reduction of adverse impacts on the character of the neighborhood due to noise, traffic, parking, odors, rodents and other vectors, dust, litter, fire hazard, decomposition gases, vehicle pollution and other pollution, or other hazards or objectionable conditions.
- (e) The applicant shall provide credible evidence to the Board to demonstrate the ability of the facility and its ancillary elements to comply with all applicable regulations. The evidence shall include, but not be limited to:
 - 1. An indication of the site and description of land uses within .25 miles of the site;
 - 2. A site plan showing the layout of the proposed facility, including main building(s), fences and screens, access to rail if available, street access, parking and queuing areas and a functional diagram indicating proposed use of the site;
 - 3. An operating plan indicating types of waste to be accepted at the facility and estimates of the volume and number of trips of incoming and outgoing materials daily and during peak periods;

4. A plan for preventing and controlling offensive noises, odors, rodents and other vectors;
 5. A traffic study which indicates truck routes to and from the facility on streets, to the extent possible, that are major arterials and highways and do not abut residential neighborhoods along the way, with the objective of minimizing potential adverse impacts on adjacent neighborhoods; and
 6. A certified statement by an architect or engineer licensed in the District of Columbia that the facility as sited and designed to the best of his/her professional knowledge and belief is capable of complying with these regulations and all other applicable regulations of the District of Columbia government, including without limitation, regulations pursuant to the Solid Waste Facility Permit Act of 1995.
- (f) There shall be no truck access, parking, standing or queuing to the facility from any street, or block-long portion of a street for which fifty percent (50%) or more of the abutting properties on either side are used for residential purposes. No truck dumping or picking up solid waste shall park, stand, or queue for the facility from any public right-of-way. Vehicular traffic resulting from operations at the facility shall not obstruct traffic and the location of the facility shall provide access from a paved street with a road base capable of withstanding anticipated load limits.
- (g) The facility shall also be subject to the "Standards of External Effects" (C-M) under Section 804, and the D.C. Noise Control Act and standards.
- (h) All solid waste handling activities, including depositing, processing, separation and loading shall be within a fully enclosed building to minimize the adverse impacts due to noise, traffic, parking, odors, rodents and other vectors, dust, litter, fire hazard, decomposition gases, wastewater, vehicle pollution and other pollution, or other hazards or objectionable conditions.
- (i) The facility shall be enclosed on all sides by an opaque fence or wall at least ten feet (10 ft.) in height. The facility shall be secured from unauthorized deposit and removal of solid waste or other materials when attendants are not present.
- (j) The facility shall provide on-site parking and queuing as follows:
1. Space shall be provided on-site to park each commercial vehicle operated by the facility;

2. One employee parking space shall be provided for each commercial vehicle lawfully parked on the site after operating hours;
 3. If the facility serves the public, all parking and queuing space shall be provided on-site to accommodate projected peak demand; and
 4. Additional parking, truck maneuvering or queuing space may be required by the Board of Zoning Adjustment after considering the applicant's analysis of such needs and the reports of the Department of Public Works and the Office of Planning. However, at a minimum, the facility shall be configured in such a manner that trucks entering or leaving the facility shall not back in from or back out onto any public right-of way.
- 802.5 The Board may proscribe or require specific operating hours for the facility and the use of any street or highway for trucks entering or leaving the facility to lessen traffic congestion and otherwise assure the quiet enjoyment of residential uses adjacent to a facility.
- 802.6 Nothing in this section shall preclude the Board from imposing additional or more strict conditions pertaining to design, screening, buffering, lighting, soundproofing, signs, or any matter necessary to protect adjacent property, and special consideration will be given to protecting residential property from excessive noise and traffic.
- 802.7 In determining whether to grant a special exception, the Board shall not take into consideration whether the District issued the applicant an interim operating permit for the facility. The granting of a special exception to a facility does not authorize that facility to operate, unless the facility has been granted all other forms of permission required for solid waste handling facilities, including, but not limited to, a valid interim operating permit or solid waste facility permit. A solid waste handling facility which has been granted a special exception remains obligated to abide by all laws applicable to solid waste handling facilities and is subject to all claims or enforcement actions which may arise from violations of such laws.
- 802.8 Any otherwise valid interim permit issued by the District government to the operator of a solid waste handling facility shall be given effect by the Board only during the pendency of the Board's consideration of an application. In the event the Board denies such application, the continued operation of the facility shall be unlawful. In the event the Board grants an application, it may provide the applicant a reasonable time in which to construct the facility as approved by the Board.

802.9 For purpose of the foregoing regulations, "solid waste" shall not include hazardous waste, which will be subject to compliance with other regulations.

2. Add "Solid Waste Handling Facility" to the list of uses permitted by Special Exception under 11 DCMR 3108:

Solid Waste Handling Facility in any C-M District Section 802

3. In Section 822 (Uses Subject to BZA Approval (M)), add new Subsections 822.3 through 822.8, as follows:

822.3 Any establishment to be used as a solid waste handling facility shall be permitted only if the following requirements shall be met:

- (a) No portion of the facility, including any structure, loading dock, truck bay, storage container, transfer equipment, or any other processing equipment or operation, shall be located within three hundred feet (300 ft.) of a property in a residential district used for residential purposes, or shall be located within fifty feet (50 ft.) of any adjacent property used as a public park, or used for retail, office or institutional purposes.
- (b) No truck access to or egress from the site shall be located within fifty feet (50 ft.) of any adjacent property used as a public park, or used for residential, retail, office or institutional purposes.
- (c) The facility shall be designed to have access to a railway siding or spur to enable the transportation by rail of solid waste out of the District of Columbia. Solid waste shall be shipped from a facility by rail, except that shipping of solid waste by truck may be permitted by the Board, if the Board finds that the applicant has demonstrated by substantial evidence that the use of rail is not practically, economically or physically feasible.
- (d) The site shall be of sufficient size so as to permit the avoidance or reduction of adverse impacts on the character of the neighborhood due to noise, traffic, parking, odors, rodents and other vectors, dust, litter, fire hazard, decomposition gases, vehicle pollution and other pollution, or other hazards or objectionable conditions.
- (e) The applicant shall provide credible evidence to the Board to demonstrate the ability of the facility and its ancillary elements to comply with all applicable regulations. The evidence shall include, but not be limited to:
 - 1. An indication of the site and description of land uses within .25 miles of the site;

2. A site plan showing the layout of the proposed facility, including main building(s), fences and screens, access to rail if available, street access, parking and queuing areas and a functional diagram indicating proposed use of the site;
 3. An operating plan indicating types of waste to be accepted at the facility and estimates of the volume and number of trips of incoming and outgoing materials daily and during peak periods;
 4. A plan for preventing and controlling offensive noises, odors, rodents and other vectors;
 5. A traffic study which indicates truck routes to and from the facility on streets, to the extent possible, that are major arterials and highways and do not abut residential neighborhoods along the way with the objective of minimizing potential adverse impacts on adjacent neighborhoods; and
 6. A certified statement by an architect or engineer licensed in the District of Columbia that the facility as sited and designed to the best of his/her professional knowledge and belief is capable of complying with these regulations and all other applicable regulations of the District of Columbia government, including without limitation, regulations pursuant to the Solid Waste Facility Permit Act of 1995.
- (f) There shall be no truck access, parking, standing or queuing to the facility from any street, or block-long portion of a street for which fifty percent (50%) or more of the abutting properties on either side are used for residential purposes. No truck dumping or picking up solid waste shall park, stand, or queue for the facility from any public right-of-way. Vehicular traffic resulting from operations at the facility shall not obstruct traffic and the location of the facility shall provide access from a paved street with a road base capable of withstanding anticipated load limits.
- (g) The facility shall also be subject to the "Standards of External Effects" (C-M) under Section 804, and the D.C. Noise Control Act and standards.
- (h) All solid waste handling activities, including depositing, processing, separation and loading shall be within a fully enclosed building to minimize the adverse impacts due to noise, traffic, parking, odors, rodents and other vectors, dust, litter, fire hazard, decomposition gases, wastewater, vehicle pollution and other pollution, or other hazards or objectionable conditions.

(i) The facility shall be enclosed on all sides by an opaque fence or wall at least ten feet (10 ft.) in height. The facility shall be secured from unauthorized deposit and removal of solid waste or other materials when attendants are not present.

(j) The facility shall provide on-site parking and queuing as follows:

1. Space shall be provided on-site to park each commercial vehicle operated by the facility;
2. One employee parking space shall be provided for each commercial vehicle lawfully parked on the site after operating hours;
3. If the facility serves the public, all parking and queuing space shall be provided on-site to accommodate projected peak demand; and
4. Additional parking, truck maneuvering or queuing space may be required by the Board of Zoning Adjustment after considering the applicant's analysis of such needs and the reports of the Department of Public Works and the Office of Planning. However, at a minimum, the facility shall be configured in such a manner that trucks entering or leaving the facility shall not back in from or back out onto any public right-of way.

822.4 The Board may proscribe or require specific operating hours for the facility and the use of any street or highway for trucks entering or leaving the facility to lessen traffic congestion and otherwise assure the quiet enjoyment of residential uses adjacent to a facility.

822.5 Nothing in this section shall preclude the Board from imposing additional or more strict conditions pertaining to design, screening, buffering, lighting, soundproofing, signs, or any matter necessary to protect adjacent property, and special consideration will be given to protecting residential property from excessive noise and traffic.

822.6 In determining whether to grant a special exception, the Board shall not take into consideration whether the District issued the applicant an interim operating permit for the facility. The granting of a special exception to a facility does not authorize that facility to operate, unless the facility has been granted all other forms of permission required for solid waste handling facilities, including, but not limited to, a valid interim operating permit or solid waste facility permit. A solid waste handling facility which has been granted a special exception remains obligated to abide by all laws applicable to solid waste handling facilities and is subject to all claims or enforcement actions which may arise from violations of such laws.

822.7 Any otherwise valid interim permit issued by the District government to the operator of a solid waste handling facility shall be given effect by the Board only during the pendency of the Board's consideration of an application. In the event the Board denies such application, the continued operation of the facility shall be unlawful. In the event the Board grants an application, it may provide the applicant a reasonable time in which to construct the facility as approved by the Board.

822.8 For purpose of the foregoing regulations, "solid waste" shall not include hazardous waste, which will be subject to other regulations.

Vote of the Zoning Commission taken at its regular meeting on February 10, 1997: **4-0** (Maybelle Taylor Bennett, Herbert M. Franklin, John G. Parsons and Jerrily R. Kress to approve the text amendments, as amended).

Vote of the Zoning Commission taken at its regular meeting on July 14, 1997: **4-0** (John G. Parsons, Jerrily R. Kress, Maybelle Taylor Bennett, to approved revisions to the proposed text amendments; Herbert M. Franklin to approve by absentee vote).

Vote of the Zoning Commission taken at its regular meeting on October 23, 1997: **3-0** (John G. Parsons, Herbert M. Franklin and Maybelle Taylor Bennett to approve revised proposed rules; Jerrily R. Kress, not present, not voting).

At its special public meeting on February 26, 1998, the Zoning Commission took partial final action by revising the language of the proposed rules based on public comments received and further analysis by the Office of Planning. The Commission noted that the changes are within the scope of the public hearing notice and the proposed rules as published. The revisions were adopted on a section-by-section basis, which follows the numbering of the proposed rules for the appropriate provisions of Section 802 (C-M zone districts). The Commission noted that the language is identical for the applicable provisions of Section 822 (M zone district). The Commission took partial final action by voting as follows:


1. **Subsection 802.4 (Introductory language) and Paragraph 802.4(a)** – The Commission voted to leave the language as published in the revised proposed rulemaking. **VOTE 4-0** (Jerrily R. Kress, Maybelle Taylor Bennett, John G. Parsons and Herbert M. Franklin to adopt as published).
2. **Paragraph 802.4(b)** – The Commission voted to specify the type of "adjacent property" and add language that covers both access to and egress from the site/facility. **VOTE 4-0** (John G. Parsons, Herbert M. Franklin, Jerrily R. Kress and Maybelle Taylor Bennett to adopt with revisions).

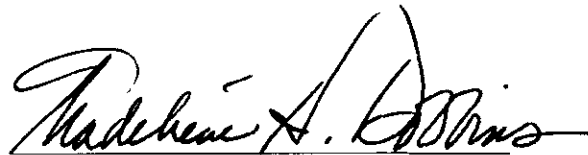
3. **Paragraph 802.4(c)** – The Commission voted to make this provision Paragraph 802.4(d) and revise the language to ensure that the site size is considered regarding the avoidance or reduction of adverse impacts. **VOTE 4-0** (John G. Parsons, Herbert M. Franklin, Jerrily R. Kress and Maybelle Taylor Bennett to adopt with revisions and relocation).
4. **Paragraph 802.4(d)** – The Commission voted to delete the last two sentences of the provision and move it to Paragraph 802.4(e) as subparagraph (6). **VOTE 4-0** (Herbert M. Franklin, Jerrily R. Kress, John G. Parsons and Maybelle Taylor Bennett to adopt with revisions and relocation).
5. **Paragraph 802.4(e) (Introductory language) and Subparagraphs (1), (2), (3) and (4)** – The Commission voted to adopt as published with one grammatical correction. **VOTE 4-0** (Herbert M. Franklin, Jerrily R. Kress, John G. Parsons and Maybelle Taylor Bennett to adopt with correction).
6. **Subparagraph 802.4(e)(5)** – The Commission voted to revise the provision to conform to realistic outcomes of a traffic study, including the use of streets, to the extent possible, that are major arterials or highways, with the overall goal of minimizing adverse impacts on adjacent neighborhoods. **VOTE 4-0** (Herbert M. Franklin, Jerrily R. Kress, John G. Parsons and Maybelle Taylor Bennett to adopt with revisions).
7. **Paragraph 802.4(f)** – The Commission voted to delete Subparagraphs (2), (3) and (4) and revise the introductory language to delete the phrase “with the concurrence of the Department of Public Works” and incorporate Subparagraph (1) into that language and renumber it as 802.4(c). **VOTE 4-0** (Herbert M. Franklin, Jerrily R. Kress, John G. Parsons and Maybelle Taylor Bennett to adopt with revisions and renumbering).
8. **Paragraph 802.4(g)** – The Commission voted to revised the provision to include a description of the street-type referred to in the provision. Based on the relocation and renumbering of other provisions, this provision becomes 802.4(f). **VOTE 4-0** (Herbert M. Franklin, Maybelle Taylor Bennett, Jerrily R. Kress and John G. Parsons to adopt with revisions).
9. **Paragraph 802.4(h)** – The Commission voted to adopt as published. This provision becomes 802.4(g). **VOTE 4-0** (Herbert M. Franklin, John G. Parsons, Maybelle Taylor Bennett and Jerrily R. Kress to adopt as published).
10. **Paragraph 802.4(i)** – The Commission voted to revise the provision to delete “air-locked” and include language about minimizing adverse impacts. This provision becomes 802.4(h). **VOTE 4-0** (Jerrily R. Kress, Maybelle Taylor Bennett, John G. Parsons and Herbert M. Franklin to adopt with revisions).

11. **Paragraphs 802.4(j) and (k)** – The Commission voted to adopt as published. The provisions become 802.4(i) and (j), respectively. **VOTE 4-0** (Herbert M. Franklin, Jerrily R. Kress, John G. Parsons and Maybelle Taylor Bennett to adopt as published).
12. **Subsections 802.5 through 802.9** – The Commission voted to adopt as published. **VOTE 4-0** (Jerrily R. Kress, Herbert M. Franklin, John G. Parsons and Maybelle Taylor Bennett to adopt as published).

This order was adopted by the Zoning Commission at its public meeting on March 9, 1998 by a vote of **4-0** (Jerrily R. Kress, Herbert M. Franklin, John G. Parsons and Maybelle Taylor Bennett, to adopt, as amended).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on **MAR 27 1998**.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning